## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

Gary Z. Thomas,	) Civil Action No.: 8:12-3143-MGI
a/k/a Gary Zachariah Thomas,	)
Plaintiff,	) ) ORDER AND OPINION
VS.	)
John Stathakis, Assistant Public Defender,	) )
Defendant.	) ) )

Plaintiff Gary Z. Thomas ("Plaintiff"), proceeding, *pro se*, is detained at the Anderson County Detention Center. On November 5, 2012, Plaintiff, filed this civil action against John Stathakis, Assistant Public Defender for Anderson County, alleging a "violation of right to effective assistance of counsel." (ECF No. 1.) In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pretrial handling. On January 10, 2013, Magistrate Judge Austin issued a Report and Recommendation recommending *inter alia* that the court dismiss Plaintiff's complaint without prejudice and service of process as Plaintiff sues a Defendant who is not considered a "state-actor" amenable to suit under 42 U.S.C. § 1983. (ECF No. 16 at 3.)

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The Court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The Court is charged with making a *de novo* determination of those

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portions of the Report and Recommendation to which specific objections are made. Plaintiff was

advised of his right to file objections to the Report and Recommendation. (ECF No. 16 at 5.) On

January 16, 2013, Plaintiff filed a reply stating that he has no objections to the Report and

Recommendation. In the absence of a timely filed objection, a district court need not conduct a de

novo review, but instead must "only satisfy itself that there is no clear error on the face of the record

in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310,

315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report and Recommendation,

the Court finds the Magistrate Judge's recommendation to be proper. Accordingly, the Report and

Recommendation is incorporated herein by reference and this action is DISMISSED without

prejudice and without service of process.

IT IS SO ORDERED.

s/Mary G. Lewis

United States District Judge

Spartanburg, South Carolina

January 31, 2013

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